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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
08/962,776 11/03/1997		ROMAN SCHERTLER	622/40901CO 9277			
75	90 01/14/2003					
CROWELL & MORING LLP			EXAMINER			
INTELLECTUAL PROPERTY GROUP P.O. BOX 14300			JIMENEZ, MAI	RC QUEMUEL		
WASHINGTON	N, DC 20044-4300		ART UNIT	PAPER NUMBER	•	
			3726			

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary Examiner	•					<u> </u>
Examiner Marc Jimenez Art Unit 3726			Application	n No.	Applicant(s)	
Marc Jimenez 3726 - The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Estantisance of time may be wastilebe under the provisions of 37 CFR 1.136(e). In no event, however, may a reply be timely filed after SIX (e) MCNTH's from the mailing date of this communication. If the period for reply specified above, is the shaming date of this communication. If the period for reply sispecified above, the maximum statutory period will apply and will expire 30 length 50 from the immediated of this communication. If the period for reply sispecified above, the maximum statutory period will apply and will expire 30 length 50 from the immediated of this communication. If the period for reply is specified above, the maximum statutory period will apply and will expire 30 length 50 from the communication. If the period for reply is specified above, the maximum statutory period will apply and will expire 30 length 50 from the communication of the discommunication. Any reply received by the Difference by the file of the schorum of the specified of this communication. Any reply received by the Difference by the file of this communication, even if timely filed, may reduce any search of the specification is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-34 and 58-83 is/are pending in the application. 4a) Of the above claim(s)			08/962,776	3	SCHERTLER, ROMAN	
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THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.36(a). In no event, however, may a reply be timely filed after SIX (8) (MONTH'S from the mailing date of this communication. If the period for reply is specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. If NO period for reply is specified above is less than thirty (30) days, a reply within the statutory provided apply and will expert SIX (8) MONTH'S from the mailing date of this communication. Feature to reply within the act or extended period to reply with one speciation to become advanced and substitution or reply within the set or extended period to reply with special control to reply with special and the statutory period will apply and will expert SIX (8) MONTH'S from the mailing date of this communication, even if timely fised, may reduce any cannot part the mailing date of this communication, even if timely fised, may reduce any cannot greatly fised on the communication, even if timely fised, may reduce any cannot greatly fised on the communication, even if timely fised, may reduce any cannot greatly fised on the communication of the second greatly fised on the communication, even if timely fised, may reduce any cannot greatly fised and communication. **Status** 1) Second fised fised from the status of the provision of the provision of the communication. **This action is FINAL.** 2b) This action is non-final. 3) In section is FINAL.** 2b) This action is non-final. 3) Since this application is no condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Exparter Quayle, 1935 C.D. 11, 453 O.G. 213. **Disposition of Claims** 4) Claim(s) 1-34 and 58-83 is/are pending in the application. 4a) Of the above claim(s)			ears on the	cover sheet with the c	orrespondence add	ress
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* See the attached detailed Office action for a list of the certified copies not received.	* 5	application from the International Bu	reau (PCT f	Rule 17.2(a)).		tage
14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application		•		•		application).
a) ☐ The translation of the foreign language provisional application has been received. 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.		, _				
Attachment(s)			io priority un		GHO/OF TET.	
1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s)	1) Notice	te of References Cited (PTO-892) te of Draftsperson's Patent Drawing Review (PTO-948)		5) Notice of Informal		

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DETAILED ACTION

Prosecution Reopened

1. Prosecution on the merits of this application is reopened on Claims 1-34 and 58-83 considered unpatentable for the reasons indicated below:

Original Patent

2. Receipt is acknowledged of the original letters patent which was received on 9/27/02.

Reissue Applications

3. Claims 1-34 and 58-83 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Hester Industries, Inc.* v. *Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp.* v. *United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application. In Claim 1, line 21 and Claim 16, line 17 of the instant reissue application, "projection from" has been deleted. This is

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an improper recapture of broadened claimed subject matter because applicant surrendered the "projecting from" limitation in the parent case. Claims 30-34 are missing the limitations of the transport arm projecting from the axis/drive shaft in combination with arms operatively coupled to conveyors to move the conveyors move the conveyors relative to the axis/drive shaft. This is an improper recapture of broadened claimed subject matter of the present reissue application because applicant surrendered these limitations in the parent case.

In the parent case, Claims 8 and 9 were put in independent form in combination with the limitations of Claim 1. Claim 8 included the limitations "projecting from". Because applicant intentionally put the limitations of both Claim 8 and Claim 9 in combination with independent Claim 1, applicant surrendered the subject matter of Claims 8 and 9. Applicant essentially amended the claims to place the claims in condition for allowance. The examiner in the parent case indicated that Claim 9 included allowable subject matter and that if applicant put the limitations therein in independent form including all of the limitations of the base claim and any intervening claims the case would be allowed. Since applicant also included the limitations of Claim 8 into independent form, the limitations therein were also surrendered.

Contact Information

4. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information. M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

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If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, or fax (703) 872-9301 or by email to CustomerService3700@uspto.gov.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Jimenez whose telephone number is 703-306-5965. The examiner can normally be reached on Monday-Thursday and the second Friday of the biweek, between 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication

(703) 308-6789 or (888) 786-0101

Assignment Branch

(703) 308-9723

Certificates of Correction

(703) 305-8309

Drawing Corrections/Draftsman (703) 305-8404/8335 Petitions/Special Programs

Terminal Disclaimers (703) 305-8408

(703) 305-9285

PCT Help Desk

(703) 305-3257

Application/Control Number: 08/962,776

Art Unit: 3726

If the information desired is not provided above, or a number has been changed, please call the general information help line below.

Information Help line Internet PTO-Home Page 1-800-786-9199 http://www.uspto.gov/

MJ

January 7, 2003

GREGORY VIDOVICH
UPERVISORY PATENT EXAMINE

TECHNOLOGY CENTER 3700